

BEFORE THE
BOARD OF REGISTERED NURSING
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

In the Matter of the Accusation Against:

KIMBERLY YORK FERREIRA
a.k.a. KIMBERLY YORK MAY
6672 Pickett Avenue
Garden Grove, CA 92845

Registered Nurse License No. 768776

Respondent

Case No. 2012-431

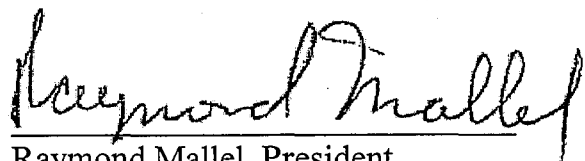
OAH No. 2012040108

DECISION AND ORDER

The attached Stipulated Surrender of License and Order is hereby adopted by the Board of Registered Nursing, Department of Consumer Affairs, as its Decision in this matter.

This Decision shall become effective on **November 7, 2012.**

IT IS SO ORDERED **November 7, 2012.**



Raymond Mallel, President
Board of Registered Nursing
Department of Consumer Affairs
State of California

1 KAMALA D. HARRIS
Attorney General of California
2 LINDA K. SCHNEIDER
Supervising Deputy Attorney General
3 KAREN L. GORDON
Deputy Attorney General
4 State Bar No. 137969
110 West "A" Street, Suite 1100
5 San Diego, CA 92101
P.O. Box 85266
6 San Diego, CA 92186-5266
Telephone: (619) 645-2073
7 Facsimile: (619) 645-2061
Attorneys for Complainant

8
9 **BEFORE THE**
BOARD OF REGISTERED NURSING
10 **DEPARTMENT OF CONSUMER AFFAIRS**
STATE OF CALIFORNIA

11 In the Matter of the Accusation Against:

Case No. 2012-431

12 **KIMBERLY YORK FERREIRA, AKA**
13 **KIMBERLY YORK MAY**
14 **6672 Pickett Avenue**
Garden Grove, CA 92845
15 **Registered Nurse License No. 768776**

OAH No. 2012040108

**STIPULATED SURRENDER OF
LICENSE AND ORDER**

16 Respondent.

17
18 In the interest of a prompt and speedy resolution of this matter, consistent with the public
19 interest and the responsibility of the Board of Registered Nursing, Department of Consumer
20 Affairs, the parties hereby agree to the following Stipulated Surrender of License and Order,
21 which will be submitted to the Board for approval and adoption as the final disposition of the
22 Accusation.

23 **PARTIES**

24 1. Louise R. Bailey, M.Ed., RN (Complainant) is the Executive Officer of the Board of
25 Registered Nursing. She brought this action solely in her official capacity and is represented in
26 this matter by Kamala D. Harris, Attorney General of the State of California, by Karen L.
27 Gordon, Deputy Attorney General.
28

2. Kimberly York Ferreira, aka Kimberly York May (Respondent) is representing herself in this proceeding and has chosen not to exercise her right to be represented by counsel.

3. On or about February 22, 2010, the Board of Registered Nursing issued Registered Nurse License No. 768776 to Kimberly York Ferreira, aka Kimberly York May (Respondent). The Registered Nurse License was in full force and effect at all times relevant to the charges brought in Accusation No. 2012-431 and will expire on March 31, 2014, unless renewed.

JURISDICTION

4. Accusation No. 2012-431 was filed before the Board of Registered Nursing (Board), Department of Consumer Affairs, and is currently pending against Respondent. The Accusation and all other statutorily required documents were properly served on Respondent on February 15, 2012. Respondent timely filed her Notice of Defense contesting the Accusation. A copy of Accusation No. 2012-431 is attached as Exhibit A and incorporated by reference.

ADVISEMENT AND WAIVERS

5. Respondent has carefully read, and understands the charges and allegations in Accusation No. 2012-431. Respondent also has carefully read, and understands the effects of this Stipulated Surrender of License and Order.

6. Respondent is fully aware of her legal rights in this matter, including the right to a hearing on the charges and allegations in the Accusation; the right to be represented by counsel, at her own expense; the right to confront and cross-examine the witnesses against her; the right to present evidence and to testify on her own behalf; the right to the issuance of subpoenas to compel the attendance of witnesses and the production of documents; the right to reconsideration and court review of an adverse decision; and all other rights accorded by the California Administrative Procedure Act and other applicable laws.

7. Respondent voluntarily, knowingly, and intelligently waives and gives up each and every right set forth above.

///

///

///

1 CULPABILITY

2 8. Respondent admits the truth of each and every charge and allegation in Accusation
3 No. 2012-431, agrees that cause exists for discipline, and hereby surrenders her Registered Nurse
4 License No. 768776 for the Board's formal acceptance.

5 9. Respondent understands that by signing this stipulation she enables the Board to issue
6 an order accepting the surrender of her Registered Nurse License without further process.

7 CONTINGENCY

8 10. This stipulation shall be subject to approval by the Board of Registered Nursing.
9 Respondent understands and agrees that counsel for Complainant and the staff of the Board of
10 Registered Nursing may communicate directly with the Board regarding this stipulation and
11 surrender, without notice to or participation by Respondent. By signing the stipulation,
12 Respondent understands and agrees that she may not withdraw her agreement or seek to rescind
13 the stipulation prior to the time the Board considers and acts upon it. If the Board fails to adopt
14 this stipulation as its Decision and Order, the Stipulated Surrender and Disciplinary Order shall be
15 of no force or effect, except for this paragraph, it shall be inadmissible in any legal action
16 between the parties, and the Board shall not be disqualified from further action by having
17 considered this matter.

18 11. The parties understand and agree that facsimile copies of this Stipulated Surrender of
19 License and Order, including facsimile signatures thereto, shall have the same force and effect as
20 the originals.

21 12. This Stipulated Surrender of License and Order is intended by the parties to be an
22 integrated writing representing the complete, final, and exclusive embodiment of their agreement.
23 It supersedes any and all prior or contemporaneous agreements, understandings, discussions,
24 negotiations, and commitments (written or oral). This Stipulated Surrender of License and Order
25 may not be altered, amended, modified, supplemented, or otherwise changed except by a writing
26 executed by an authorized representative of each of the parties.

27 13. In consideration of the foregoing admissions and stipulations, the parties agree that
28 the Board may, without further notice or formal proceeding, issue and enter the following Order:

ORDER

IT IS HEREBY ORDERED that Registered Nurse License No. 768776, issued to Respondent Kimberly York Ferreira, aka Kimberly York May, is surrendered and accepted by the Board of Registered Nursing.

1. The surrender of Respondent's Registered Nurse License and the acceptance of the surrendered license by the Board shall constitute the imposition of discipline against Respondent. This stipulation constitutes a record of the discipline and shall become a part of Respondent's license history with the Board of Registered Nursing.

2. Respondent shall lose all rights and privileges as a Registered Nurse in California as of the effective date of the Board's Decision and Order.

3. Respondent shall cause to be delivered to the Board her pocket license and, if one was issued, her wall certificate on or before the effective date of the Decision and Order.


4. If Respondent ever applies for licensure or petitions for reinstatement in the State of California, the Board shall treat it as a petition for reinstatement. Respondent must comply with all the laws, regulations and procedures for licensure in effect at the time the application or petition is filed, and all of the charges and allegations contained in Accusation No. 2012-431 shall be deemed to be true, correct, and admitted by Respondent when the Board determines whether to grant or deny the application or petition.

5. Upon reinstatement of the license, Respondent shall pay the Board costs associated with its investigation and enforcement pursuant to Business and Professions Code section 125.3, in the amount of \$2,927.50. Respondent shall be permitted to pay these costs in a payment plan approved by the Board. Nothing in this provision shall be construed to prohibit the Board from reducing the amount of cost recovery upon reinstatement of the license.

6. If Respondent should ever apply or reapply for a new license or certification, or petition for reinstatement of a license, by any other health care licensing agency in the State of California, all of the charges and allegations contained in Accusation, No. 2012-431 shall be deemed to be true, correct, and admitted by Respondent for the purpose of any Statement of Issues or any other proceeding seeking to deny or restrict licensure.

ACCEPTANCE

DATED:


KIMBERLY YORK FERREIRA, AI
KIMBERLY YORK MAY
Respondent

ENDORSEMENT

Dated: 8-22-12

KAMALA D. HARRIS
Attorney General of California
LINDA K. SCHNEIDER
Supervising Deputy Attorney General

Karen Loda

KAREN L. GORDON
Deputy Attorney General
Attorneys for Complainant

5

Exhibit A

Accusation No. 2012-431

1 KAMALA D. HARRIS
Attorney General of California
2 ALFREDO TERRAZAS
Senior Assistant Attorney General
3 LINDA K. SCHNEIDER
Supervising Deputy Attorney General
4 State Bar No. 101336
110 West "A" Street, Suite 1100
5 San Diego, CA 92101
P.O. Box 85266
6 San Diego, CA 92186-5266
Telephone: (619) 645-3037
7 Facsimile: (619) 645-2061
Attorneys for Complainant

8
9 **BEFORE THE**
BOARD OF REGISTERED NURSING
10 **DEPARTMENT OF CONSUMER AFFAIRS**
STATE OF CALIFORNIA

11 In the Matter of the Accusation Against:

12 **KIMBERLY YORK FERREIRA**
13 **Aka KIMBERLY YORK MAY**
14 **6672 Pickett Avenue**
Garden Grove, CA 92845

Case No. **2012-431**

15 **Registered Nurse License No. 768776**

A C C U S A T I O N

16 Respondent.

17
18 Complainant alleges:

19 **PARTIES**

20 1. Louise R. Bailey, M.Ed., RN (Complainant) brings this Accusation solely in her
21 official capacity as the Interim Executive Officer of the Board of Registered Nursing,
22 Department of Consumer Affairs.

23 2. On or about February 22, 2010, the Board of Registered Nursing issued
24 Registered Nurse License Number 768776 to Kimberly York Ferreira (Respondent). The
25 Registered Nurse License was in full force and effect at all times relevant to the charges brought
26 herein and will expire on March 31, 2012, unless renewed.

27 ///

28 ///

JURISDICTION

3. This Accusation is brought before the Board of Registered Nursing (Board) for the Department of Consumer Affairs, State of California, under the authority of the following laws. All section references are to the Business and Professions Code unless otherwise indicated.

4. Section 2750 of the Business and Professions Code (Code) provides, in pertinent part, that the Board may discipline any licensee, including a licensee holding a temporary or an inactive license, for any reason provided in Article 3 (commencing with section 2750) of the Nursing Practice Act.

5. Section 2764 of the Code provides, in pertinent part, that the expiration of a license shall not deprive the Board of jurisdiction to proceed with a disciplinary proceeding against the licensee or to render a decision imposing discipline on the license. Under section 2811(b) of the Code, the Board may renew an expired license at any time.

STATUTORY PROVISIONS

6. Section 2761 of the Code states:

The board may take disciplinary action against a certified or licensed nurse or deny an application for a certificate or license for any of the following:

(a) Unprofessional conduct, which includes, but is not limited to, the following:

....

(f) Conviction of a felony or of any offense substantially related to the qualifications, functions, and duties of a registered nurse, in which event the record of the conviction shall be conclusive evidence thereof.

....

7. Section 2762 of the Code states:

In addition to other acts constituting unprofessional conduct within the meaning of this chapter [the Nursing Practice Act], it is unprofessional conduct for a person licensed under this chapter to do any of the following:

(a) Obtain or possess in violation of law, or prescribe, or except as directed by a licensed physician and surgeon, dentist, or podiatrist administer to himself or herself, or furnish or administer to another, any controlled substance as defined in Division 10 (commencing with Section 11000) of the Health and Safety Code or any dangerous drug or dangerous device as defined in Section 4022.

///

1 (b) Use any controlled substance as defined in Division 10
2 (commencing with Section 11000) of the Health and Safety Code, or any dangerous
3 drug or dangerous device as defined in Section 4022, or alcoholic beverages, to an
4 extent or in a manner dangerous or injurious to himself or herself, any other person,
or the public or to the extent that such use impairs his or her ability to conduct with
safety to the public the practice authorized by his or her license.

5 (c) Be convicted of a criminal offense involving the prescription,
6 consumption, or self-administration of any of the substances described in
7 subdivisions (a) and (b) of this section, or the possession of, or falsification of a
8 record pertaining to, the substances described in subdivision (a) of this section, in
which event the record of the conviction is conclusive evidence thereof.

8

9 8. Section 490 of the Code provides, in pertinent part, that a board may suspend or
10 revoke a license on the ground that the licensee has been convicted of a crime substantially
11 related to the qualifications, functions, or duties of the business or profession for which the
12 license was issued.

13 9. Section 493 of the Code states:

14 Notwithstanding any other provision of law, in a proceeding conducted by a
15 board within the department pursuant to law to deny an application for a license or
16 to suspend or revoke a license or otherwise take disciplinary action against a person
17 who holds a license, upon the ground that the applicant or the licensee has been
18 convicted of a crime substantially related to the qualifications, functions, and duties
19 of the licensee in question, the record of conviction of the crime shall be conclusive
evidence of the fact that the conviction occurred, but only of that fact, and the board
may inquire into the circumstances surrounding the commission of the crime in
order to fix the degree of discipline or to determine if the conviction is substantially
related to the qualifications, functions, and duties of the licensee in question.

20 As used in this section, 'license' includes 'certificate,' 'permit,' 'authority,'
21 and 'registration.'

22 REGULATORY PROVISIONS

23 10. California Code of Regulations, title 16, section 1444, states:

24 A conviction or act shall be considered to be substantially related to the
25 qualifications, functions or duties of a registered nurse if to a substantial degree it
26 evidences the present or potential unfitness of a registered nurse to practice in a
27 manner consistent with the public health, safety, or welfare. Such convictions or
28 acts shall include but not be limited to the following:

///

1 (a) Assaultive or abusive conduct including, but not limited to, those
2 violations listed in subdivision (d) of Penal Code Section 11160.

3 (b) Failure to comply with any mandatory reporting requirements.

4 (c) Theft, dishonesty, fraud, or deceit.

5 (d) Any conviction or act subject to an order of registration pursuant to
6 Section 290 of the Penal Code.

7 11. California Code of Regulations, title 16, section 1445 states:
8

9 (b) When considering the suspension or revocation of a license on the
10 grounds that a registered nurse has been convicted of a crime, the board, in
11 evaluating the rehabilitation of such person and his/her eligibility for a license will
12 consider the following criteria:

13 (1) Nature and severity of the act(s) or offense(s).

14 (2) Total criminal record.

15 (3) The time that has elapsed since commission of the act(s) or
16 offense(s).

17 (4) Whether the licensee has complied with any terms of parole,
18 probation, restitution or any other sanctions lawfully imposed against the licensee.

19 (5) If applicable, evidence of expungement proceedings pursuant to
20 Section 1203.4 of the Penal Code.

21 (6) Evidence, if any, of rehabilitation submitted by the licensee.

22 COST RECOVERY

23 12. Section 125.3 of the Code provides, in pertinent part, that the Board may request
24 the administrative law judge to direct a licentiate found to have committed a violation or
25 violations of the licensing act to pay a sum not to exceed the reasonable costs of the investigation
26 and enforcement of the case.

27 FIRST CAUSE FOR DISCIPLINE

28 (April 20, 2011 Criminal Conviction for DUI on March 2, 2010)

13. Respondent has subjected her registered nurse license to disciplinary action under
sections 490 and 2761, subdivision (f) of the Code in that she was convicted of crimes that are
substantially related to the qualifications, functions, and duties of a registered nurse. The
circumstances are as follows:

///

1 a. On or about April 20, 2011, in a criminal proceeding entitled *The People*
2 *of the State of California vs. Kimberly York Ferreira, aka Kimberly York May*, in Orange County
3 Superior Court, case number 10WM06892, Respondent was convicted on her plea of guilty of
4 violating Vehicle Code (VC) section 23152, subdivision (b), driving with a blood alcohol
5 concentration (BAC) of 0.08% or more after having been convicted of alcohol-related reckless
6 driving within the past ten years, a misdemeanor. Respondent also admitted having sustained a
7 prior conviction for violation of VC section 23152, subdivision (a) on April 30, 2007, in case
8 number 07HM04227, detailed in paragraph 16 below. Respondent also pled guilty to violation of
9 VC section 23154, subdivision (a), driving with a BAC of 0.01% or more while on probation for
10 a violation of VC section 23152, an infraction. An additional charge for violation of VC section
11 23152, subdivision (a), driving under the influence of alcohol, was dismissed as a result of a plea
12 bargain.

13 b. As a result of the convictions, on or about April 20, 2011, Respondent was
14 sentenced to five years informal probation and ordered to serve 60 days in Orange County Jail.
15 Respondent was further ordered to attend and complete an 18 month Multiple Offender Alcohol
16 Program, Mothers Against Drunk Driving (MADD) Victim's Impact Panel, pay fees, fines and
17 restitution, and comply with the terms of standard DUI probation.

18 c. The facts that led to the convictions are that in or about the early morning
19 of March 2, 2010, an officer driving southbound on Hamilton Street in Huntington Beach,
20 California noticed the vehicle immediately ahead had its driver side brake light out. The officer
21 stopped the vehicle driven by the Respondent as it slowed down to turn into a parking lot on the
22 northwest corner. As Respondent's vehicle came to a stop, another officer arrived and
23 immediately noticed Respondent's objective symptoms of intoxication. Respondent denied being
24 intoxicated, but upon checking Respondent's records, the assisting officer saw that Respondent
25 was on probation until May 29, 2010, due to a 2007 conviction for DUI. As such, field sobriety
26 tests were conducted which Respondent failed. Respondent's breath test resulted in a BAC
27 reading of .14% and .13% and Respondent was arrested.

28 ///

- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 10
- 11
- 12
- 13
- 14
- 15
- 16
- 17
- 18
- 19
- 20
- 21
- 22
- 23
- 24
- 25
- 26
- 27
- 28

2

3
4
5
6
7

8

9

10
11
12
13

14

15
16
17
18
19
20
21
22
23
24
25
26

27

28

PRAYER

WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged, and that following the hearing, the Board of Registered Nursing issue a decision:

1. Revoking or suspending Registered Nurse License Number 768776, issued to Kimberly York Ferreira;
2. Ordering Kimberly York Ferreira to pay the Board of Registered Nursing the reasonable costs of the investigation and enforcement of this case, pursuant to Business and Professions Code section 125.3;
3. Taking such other and further action as deemed necessary and proper.

DATED: February 15, 2012 Louise R. Bailey
LOUISE R. BAILEY, M.ED., RN
Interim Executive Officer
Board of Registered Nursing
Department of Consumer Affairs
State of California
Complainant

SD2011801662
80580580.doc